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In The Supreme Court of the United States

OCTOBER TERM 1997

VERN T. JORDAHL, MARY-BETH LAROCK, and VIRGINIA LEADERSHIP COUNCIL,

Petitioners,

v.

DEMOCRATIC PARTY OF VIRGINIA, RICHMOND CITY DEMOCRATIC COMMITTEE, and COMMONWEALTH OF VIRGINIA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioners are Vern T. Jordahl, Mary-Beth LaRock and Virginia Leadership Council. Respondents are the Democratic Party of Virginia, the Richmond City Democratic Committee and the Commonwealth of Virginia.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This case involves established issues relating to justiciability and jurisdiction. The courts below properly addressed these issues and found that the district court lacked jurisdiction over the petitioners' claims.

In a unanimous opinion, a panel of the Court of Appeals for the Fourth Circuit held that the district court properly dismissed the petitioners' Complaint on the basis that the claims were not justiciable and that the Court was without jurisdiction under the Rooker-Feldman doctrine. Jordahl v. Democratic Party of Virginia, 122 F.3d 192 (4th Cir. 1997). Finding that it lacked jurisdiction, the Court of Appeals properly declined the petitioners' invitation to address the prior restraints argument, which forms the heart of the Petition for a Writ of Certiorari (hereafter referred to as "Petition"). The petitioners now seek to test their constitutional claims which were not considered by the courts below.

This brief addresses the only issues relevant to consideration of the Petition -- justiciability and jurisdiction.[1] For

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[1]This brief identifies certain misstatements of law or fact in the Petition, as required by Rule 15.2 of the

the reasons that follow, there is no important issue of law for this Court to consider.

REASONS FOR DENYING THE WRIT

The courts below thoughtfully considered the fact-specific issues as to first, justiciability, and second, jurisdiction. There are no important federal issues for this Court to decide. The constitutional issue concerning prior restraints, which is arguably the only important issue raised, is not justiciable. (App. 39-42.)[2]

The remaining issue involves the application of the Rooker-Feldman doctrine to the specific facts of this case. The petitioners' claim that the Court of Appeals' Rooker-Feldman analysis creates a conflict among the circuits is incorrect and misstates the record.

Simply put, there are no novel or important questions of law for this Court to decide.

Rules of the United States Supreme Court.

[2]"(App. __)" refers to the Appendix contained in the Petition.

I. The Petition misrepresents the Court of Appeals' finding regarding the justiciability of the claims in Count I.

The Court of Appeals correctly found that the petitioners' claims based upon prior enforcement of former versions of the election laws are moot and that their claims based upon enforcement of the current election laws are not ripe. These findings do not involve any important issue of law for this Court to consider.

First, the Court of Appeals correctly held that the petitioners' claims concerning enforcement of Virginia's former election laws are moot.

> To qualify as a case fit for federal court adjudication, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed."

Arizonans for Official English v. Arizona, ___ U.S. ___, ___, 117 S. Ct. 1055, 1068 (1997) (civil case became moot on appeal) (citations omitted). Because the election laws as they existed when this dispute arose now have been materially changed, no actual controversy exists.

The statutes in question have materially altered the law so as to render the petitioners' claims moot. Of the many changes made to these statutory provisions, two deserve particular attention. First, in 1993, the term "political committee" was defined to

exclude 501(3)(c) corporations. See Virginia Code Ann. § 24.1-254.1 and Virginia Code Ann. § 24.2-901 (App. 60, 69-70, 75-77.) Second, the 1996 amendments to § 24.2-1014(B) of the Code of Virginia added the term "clearly identified candidate" and deleted the term "potential nominee." (App. 74.) The later change reflected recognition of the law as set forth in the Court's decision in McIntyre v. Ohio Elections Com'n, 514 U.S. 334 (1995), cited by the Court of Appeals. (App. 40.)

The petitioners incorrectly state that "[t]he Court of Appeals did not dispute Petitioners' contention . . . that the recodification and amendments of the VCFDA did not materially alter the law." (Petition at 15.) To the contrary, the Court of Appeals considered the history of the statutes at issue, noting that the statutes in 1993 had been twice amended and then repealed altogether and recodified. (App. 40.) Indeed, the Court of Appeals affirmed the district court's finding that the "statutes which [Petitioners] challenged are no longer the statutes in effect in Virginia." (App. 40.) Thus, an examination of the Court of Appeals' opinion confirms that the Court held that the statutes materially changed the law so as to render any claim on the former statutes moot.

The petitioners also assert that the Court of Appeals' decision conflicts with this Court's ruling in Northeastern Florida Chapter of Ass'n Gen. Contractors v. City of Jacksonville, 508 U.S. 656 (1993) and a decision of the Seventh

Circuit in Rembert v. Sheahan, 62 F.3d 937 (7th Cir. 1995). First, these cases involve only insignificant changes made to a statute. These cases are not in conflict with the Court of Appeals' opinion, which found that the changes to the statutes were material. These cases, accordingly, have no bearing on the factual determination made in the present case.

Second, the Court of Appeals correctly held that the petitioners' claims based upon the current election laws are not ripe. The Court found, on the record before it, that "[n]o evidence exists that [the petitioners are] currently under an actual or threatened application of the new [Virginia Campaign Finance Disclosure Act]."[3] (App. 41.)

The petitioners, nonetheless, argue that the Court of Appeals' finding on ripeness conflicts with decisions from this Court and the circuit courts. The primary case cited by the petitioners, Renne v. Geary, 501 U.S. 312 (1991), however, supports the decision of the Court of Appeals. In Renne, this Court held that

> past exposure to illegal conduct does not itself show a present case or controversy regarding

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[3]The fact that the petitioners had been subject to injunctions in the past does not create a credible threat that Respondents will again seek injunctions. Indeed, no injunctions were sought in the 1994, 1995, 1996 and 1997 state elections.

> injunctive relief . . . if unaccompanied by any continuing, present adverse effects.

501 U.S. at 321. The petitioners have not identified any "continuing, present adverse effects." Id. In fact, all of the "harms" alleged by the petitioners in their Complaint are stated in the past tense, and relate to orders and statutes no longer in effect. Thus, there is no conflict with the decision in Renne.

2. **The Petition misrepresents the Court of Appeals' finding that there is no jurisdiction under the Rooker-Feldman doctrine.**

The petitioners incorrectly state that the underlying state court injunctions were "overturned in the state court system." (Petition at 24.) From this faulty premise, the petitioners suggest that the Court of Appeals' holding means that "a federal court lacks jurisdiction to entertain any claim for damages arising out of overturned state court judgments." (Petition at 24.) The broad reading the petitioners give to the Court of Appeals' decision is not supported by the opinion. In fact, the Court of Appeals' opinion is narrowly tailored to the specific facts before it.

First, the petitioners' argument that the injunctions were "overturned in the state court system" is factually incorrect. (Petition at 24.) Indeed, none of the injunctions were overturned. The 1989 injunctions were dismissed. (App. 34.) The 1993 Fairfax injunction

was dissolved by Order of a three justice panel of the Supreme Court of Virginia without opinion pursuant to Virginia Code § 8.01-626. (App. 35.) That statute provides that where a state circuit court grants an injunction, the aggrieved party may "present a petition for review to a justice of the Supreme Court." Virginia Code Ann. § 8.01-626.[4] However, this "summary procedure" is not "a substitute for an appeal." The Omega Corp. v. Cobb, 222 Va. 875, 876, 292 S.E.2d 44, 44 (1981). The petitioners never sought an appeal of any injunctions to the Supreme Court of Virginia. Therefore, the Supreme Court of Virginia could not have "overturned" any of the injunctions.

None of the state court injunctions, moreover, were resolved favorably to the petitioners. There were no dispositions that altered the validity of the decisions to issue the injunctions. The petitioners did not "succeed" in having the injunctions overturned in the state court. The district court may not now, in a collateral proceeding, pass upon the validity of the injunctions.

Second, the Rooker-Feldman doctrine bars a district court from reviewing "challenges to state court decisions in particular cases arising out of judicial proceedings." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983). The district court "has no authority to review final judgments of a

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[4]The text of this statute is set forth at Respondents' Appendix, p.1.

state court in judicial proceedings." Id. (emphasis added).

> A judgment is final when it is a determination of the particular action or suit, although it is not a final determination of the rights of the parties.

Brown v. Carolina, C & O Ry., 116 Va. 597, 599, 83 S.E. 981, 982 (1914). The petitioners' remedy in this case was to seek appeals of the final injunction orders to the Supreme Court of Virginia. They failed to do so. They cannot bypass direct review in the state's highest court and seek, instead, to have the district court pass upon the validity or propriety of the state court injunctions.

The petitioners suggest that the decision of the Court of Appeals conflicts with this Court's decision in Heck v. Humphrey, 512 U.S. 477 (1994). To the contrary, the Heck decision supports the decision in this case.[5]

Heck involved a prisoner who brought a § 1983 action relating to his state court conviction for voluntary manslaughter. While his appeal to the state court was pending, Heck filed a § 1983 action in federal district court against the state court prosecutors and the state police. The district court dismissed the appeal. While his appeal

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[5]It should be noted that Heck was a criminal case that did not directly involve the Rooker-Feldman doctrine.

was pending to the Seventh Circuit, his conviction was affirmed by the state supreme court.

Drawing an analogy to the favorable termination requirement in malicious prosecution actions, this Court recognized that civil tort plaintiffs may not mount collateral attacks on their outstanding criminal convictions. Heck, 512 U.S. at 486. This Court did not address the issue as one involving the Rooker-Feldman doctrine, but rather, merely cited the decision in Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923), among other cases, as "express[ing] similar concerns for finality and consistency." Id. at 484-485. This Court declared, in the context of this criminal case, that

> in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.

Id. at 486-487. By comparison, the state court injunctions at issue here have never

been reversed on direct appeal or otherwise declared invalid.

Third, the petitioners incorrectly contend that the Court of Appeals' finding that the state court injunctions were judicial in character, rather than legislative, creates a conflict among the circuits. Both courts below found the specific injunctions at issue here to be judicial in character, and therefore subject to the Rooker-Feldman bar. (App. 27-28, 47-49.) These findings were based upon the fact-specific inquiry required for such a determination. See Feldman, 460 U.S. at 482 (in determining whether the proceeding is judicial, "the nature and effect" of the proceeding is controlling.)

The petitioners cite to three federal circuit court cases which they claim conflict with the Court of Appeals' decision. (Petition at 29.) These cases, however, do not involve the factual issue before the Court of Appeals in this case. Indeed, in Cheffer v. McGregor, 6 F.3d 705 (11th Cir. 1993), vacated on other grounds, 41 F.3d 1421 (11th Cir. 1994), the issue did not even arise in a Rooker-Feldman context. In its opinion, the Court of Appeals distinguished the holding in Cheffer. (App. 48-49.) That case, then, does not conflict with the decision of the Court of Appeals in the case at bar.

Nor does the decision in Hoover v. Wagner, 47 F.3d 845 (7th Cir. 1995), conflict with the Court of Appeals' decision. (Petition at 29.) The Court's statement in Hoover

that "[i]njunctions often do function quite like statutes" was dictum. Id. at 849. Likewise, the decision in Henson v. East Lincoln Township, 814 F.2d 410 (7th Cir. 1987), cert. dismissed, 506 U.S. 1042 (1993), does not conflict with the Court of Appeals' decision. In Henson, the Court held that a double class action is a "legislative or regulatory device." Id. at 416. The decision in Henson, then, is limited to its facts. Consequently, the Court of Appeals' finding that the injunction proceedings were judicial does not conflict with any of the cases cited by the petitioners.

Finally, there is no conflict among the circuits as to whether Rooker-Feldman applies to damages claims arising out of ex parte state court injunctions. The cases cited by the petitioners dealt with entirely different factual scenarios than the case at bar. The Court of Appeals addressed this argument, finding that the petitioners had been given an opportunity to be heard or to state objections in the state court proceedings. (App. 53.) Thus, the petitioners' attempt to create a conflict among the circuits on this issue is without merit.

CONCLUSION

The Petition for a Writ of Certiorari should not be granted.

Dated: December 23, 1997

Respectfully submitted,

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